IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 508 OF 2003

PURSHOTTAM R. NAIK AND ANR., ...Petitioners

Versus

VITHAL ALIAS BHIKARO R. NAIK AND 9 ORS., ...Respondents

MRS.A.A.AGNI,SHRI R.G. RAMANI

Coram:- V. G. PALSHIKAR, J.

Date:- 11th December, 2003

P.C.:

Heard.

I find no reason to exercise writ jurisdiction against the impugned order. Mrs. Agni contends that the Court below, having answered the main contention in favour of the petitioners, ought to have rejected the suit as not maintainable and answered the issue in the affirmative. I find no substance in this submission.

On the other hand, the court below was right in observing that even if the respondents were not entitled for the relief of partitioning the suit property that does not mean that the entire suit can be dismissed as not maintainable, because the suit was also for relief of permanent injunction. According to Mrs. Agni if the plaintiffs were not

entitled to the relief of partition, the question of granting permanent injunction in favour of such plaintiffs does not arise and for which reason the suit ought to be dismissed. That argument will be available at the final stage of the trial and the suit cannot be dismissed at this stage - because it is not possible to take the view that the suit is barred by law as such. Hence dismissed. The Trial Court to decided the suit on its own merit and in accordance with law.

V. G. PALSHIKAR, J.